

WILLIAM A. MUN
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

DATE: May 3, 2001
DOCKET NO: T-03832A-00-0220
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

ESSENTIAL.COM, INC., D/B/A/ ESSENTIAL.COM, INC. – YOUR ENERGY &
COMMUNICATIONS SUPERSTORE
(CC&N/RESELLER)

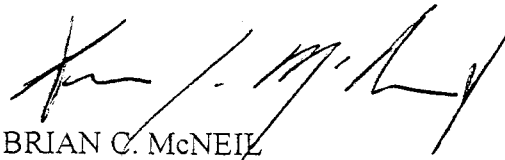
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 13, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 22, 2001 AND MAY 23, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.



BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 ESSENTIAL.COM, INC. D/B/A
8 ESSENTIAL.COM, INC.- YOUR ENERGY &
9 COMMUNICATIONS SUPERSTORE FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
RESOLD LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03832A-00-0220

DECISION NO. _____

ORDER

10 Open Meeting
11 May 22 and 23, 2001
12 Phoenix, Arizona

BY THE COMMISSION:

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On April 6, 2000, essential.com, inc. d/b/a Essential.com, Inc. -Your Energy &
17 Communications Superstore ("Essential.com" or "Applicant") filed with Docket Control of the
18 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience
19 and Necessity ("Certificate") to provide competitive resold local exchange telecommunications
20 services within the State of Arizona.

21 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
22 telecommunications providers ("resellers") were public service corporations subject to the
23 jurisdiction of the Commission.

24 3. Applicant is a Delaware corporation authorized to do business in Arizona since 1999.

25 4. Applicant is a switchless reseller of local exchange services, which intends to purchase
26 telecommunications services from Qwest Corporation, formerly U S WEST Communications, Inc.
27 ("U S WEST"). In Decision No. 62487 (April 28, 2000), the Commission approved a resale
28

1 agreement between Applicant and U S WEST.

2 5. On June 22, 2000, Applicant filed an Affidavit of Publication indicating compliance
3 with the Commission's notice requirements.

4 6. On August 18, 2000, the Commissions' Utilities Division Staff ("Staff") filed a Staff
5 Report in this matter.

6 7. In the Staff Report, Staff stated that the Applicant provided financial statements for
7 the nine-months ended September 30, 1999. These financial statements indicate that the Applicant
8 had total assets of \$11.18 million and negative stockholders' equity of \$5.58 million. In addition, the
9 Applicant had negative retained earnings of \$5.99 million. Based on this information, Staff believes
10 that the Applicant lacks adequate financial resources to provide telecommunication services in
11 Arizona absent the procurement of a performance bond.

12 8. The Staff Report stated that the Applicant has no market power and the
13 reasonableness of its rates would be evaluated in a market with numerous competitors.

14 9. Staff recommended that:

15 (a) The Applicant should be ordered to comply with all Commission rules, orders
16 and other requirements relevant to the provision of intrastate telecommunications
17 service;

18 (b) The Applicant should maintain its accounts and records as required by the
19 Commission;

20 (c) The Applicant should file with the Commission all financial and other reports
21 that the Commission may require, and in a form and at such times as the Commission
22 may designate;

23 (d) The Applicant should maintain on file with the Commission all current tariffs
24 and rates, and any service standards that the Commission may require;

25 (e) The Applicant should comply with the Commission's rules and modify its
26 tariffs to conform to these rules if it is determined that there is a conflict between the
27 Applicant's tariffs and the Commission's rules;

28 (f) The Applicant should cooperate with Commission investigations of customer
complaints;

(g) The Applicant should participate in and contribute to a universal service fund,
as required by the Commission;

1 (h) The Applicant should participate in and contribute to a universal service fund,
2 as required by the Commission;

3 (i) The Applicant should file its tariffs within 30 days of an Order in this matter,
4 and in accordance with the Decision; and

5 (j) The Applicant should notify the Commission immediately upon changes to the
6 Applicant's address or telephone number.

7 10. Staff further recommended the following;

8 (a) That the Applicant should procure a performance bond in an amount sufficient
9 to cover 60 days revenue from its customers, and any prepayments or deposits
10 collected from the Applicant's customers;

11 (b) That the amount of the performance bond should be increased if at any time it
12 would be insufficient to cover the aforementioned requirement;

13 (c) That if the Applicant desires to discontinue service, it file an application with
14 the Commission pursuant to A.A.C. R14-2-1107;

15 (d) That the Applicant be required to notify each of its customers and the
16 Commission 30 days prior to filing an application to discontinue service pursuant to
17 A.A.C. R14-2-1107;

18 (e) That failure to meet the above requirement shall result in forfeiture of the
19 Applicant's performance bond;

20 (f) That proof of the performance bond should be docketed within 30 days of a
21 Decision in this matter, or prior to the provision of service, whichever is first;

22 (g) That after one year of operation under the Certificate granted by the
23 Commission, Staff recommends that the Applicant be allowed to file a request for
24 cancellation of its established escrow account/performance bond. Such request should
25 be accompanied by information demonstrating the Applicant's financial viability.
26 Upon receipt of such filing and after Staff review, Staff will forward its
27 recommendation to the Commission for a Decision that the requested cancellation is
28 in the public interest;

(h) The Applicant's local exchange service offerings should be classified as
competitive pursuant to A.A.C. R14-2-1108; and

(i) The Applicant's competitive services should be priced at the rates proposed by
the Applicant in its most recently filed tariffs. The maximum rates for these services
should be the maximum rates proposed by the Applicant in its tariffs. The minimum
rates for the Applicant's competitive services should be the Applicant's long run
incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

1 (k) In the event that the Applicant states only one rate in its proposed tariff for a
2 competitive service, the rate stated should be the effective (actual) price to be charged
3 for the service as well as the service's maximum rate.

4 11. On August 29, 2000, the Court of Appeals, Division One ("Court"), issued its Opinion
5 in Cause No. 1CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of
6 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all
7 public service corporations in Arizona prior to setting their rates and charges."

8 12. On October 26, 2000, the Commission filed a Petition for Review to the Supreme
9 Court. On February 16, 2001, the Commission's Petition was granted.

10 13. By Procedural Order dated September 11, 2000, the Commission requested that the
11 Applicant file FVRB information.

12 14. On November 16, 2000, Staff filed its FVRB Comments indicating that Applicant did
13 not file information sufficient for Staff analysis. Staff recommended that the Applicant provide the
14 requested FVRB information if Applicant wishes to have permanent rates set in this proceeding, or in
15 the alternative, that Applicant's tariffs in this matter be reviewed and approved on an interim basis.

16 15. No exceptions were filed to the Staff Report, nor did any party request that a hearing
17 be set.

18 CONCLUSIONS OF LAW

19 1. Applicant is a public service corporation within the meaning of Article XV of the
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Applicant and the subject matter of the
22 application.

23 3. Notice of the application was given in accordance with the law.

24 4. Applicant's provision of resold local exchange telecommunications service is in the
25 public interest.

26 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
27 resold local exchange telecommunications services in Arizona.

28 6. Staff's recommendations in Findings of Fact Nos. 9 and 10 are reasonable and should
be adopted, except that the bond amount required under Finding of Fact No. 10(a) shall be the greater

1 of \$25,000, or an amount sufficient to cover 60 days revenues and any prepayments or deposits
2 collected from Applicant's customers.

3 **ORDER**

4 IT IS THEREFORE ORDERED that the application of essential.com, inc. d/b/a
5 Essential.com, Inc.- Your Energy & Communications Superstore for a Certificate of Convenience
6 and Necessity for authority to provide competitive resold local exchange telecommunications
7 services shall be and the same is hereby granted, conditioned upon essential.com, inc. d/b/a
8 Essential.com, Inc.- Your Energy & Communications Superstore procuring a performance bond
9 equal to a minimum of \$25,000 to cover 60 days revenues any prepayments or deposits collected
10 from the applicant's customers, and essential.com, inc. d/b/a Essential.com, Inc.- Your Energy &
11 Communications Superstore shall increase the amount of the performance bond if at any time it
12 would be insufficient to cover the amount of such prepayments or deposits.

13 IT IS FURTHER ORDERED that essential.com, inc. d/b/a Essential.com, Inc.- Your Energy
14 & Communications Superstore shall file the following FVRB information within 18 months of ht
15 date that it first provides service. The FVRB information shall include a dollar amount representing
16 the total revenue for the first twelve months of telecommunications service provided to Arizona
17 customers by essential.com, inc. d/b/a Essential.com, Inc.- Your Energy & Communications
18 Superstore following certification, adjusted to reflect the maximum rates that essential.com, inc. d/b/a
19 Essential.com, Inc.- Your Energy & Communications Superstore requests in its tariff. This adjusted
20 total revenue figure could be calculated as the number of units sold for all services offered times the
21 maximum charge per unit. essential.com, inc. d/b/a Essential.com, Inc.- Your Energy &
22 Communications Superstore shall also file FVRB information detailing the total actual operating
23 expenses for the first twelve months of telecommunications service provided to Arizona customers by
24 essential.com, inc. d/b/a Essential.com, Inc.- Your Energy & Communications Superstore following
25 certification. essential.com, inc. d/b/a Essential.com, Inc.- Your Energy & Communications
26 Superstore shall also file FVRB information which includes a description and value of all assets,
27 including plant, equipment, and office supplies, to be used to provide telecommunications service to
28 Arizona customers for the first twelve months following essential.com, inc. d/b/a Essential.com, Inc.-

1 Your Energy & Communications Superstore's certification.

2 IT IS FURTHER ORDERED that essential.com, inc. d/b/a Essential.com, Inc.- Your Energy
3 & Communications Superstore shall comply with the Staff recommendations in Findings of Fact Nos.
4 9 and 10 with the exception of Findings of Fact 10(a).

5 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision
6 essential.com, inc. d/b/a Essential.com, Inc.- Your Energy & Communications Superstore shall notify
7 the Compliance Section of the Arizona Corporation Commission of the date that it will begin or has
8 begun providing service to Arizona customers.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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12
13 CHAIRMAN COMMISSIONER COMMISSIONER

14
15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2001.

20 BRIAN C. McNEIL
EXECUTIVE SECRETARY

21 DISSENT _____
22 JR:mlj

1 SERVICE LIST FOR:

ESSENTIAL.COM, INC. D/B/A ESSENTIAL.COM, INC.-
YOUR ENERGY & COMMUNICATIONS SUPERSTORE

3 DOCKET NO.:

T-03832A-00-0220

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